

REMARKS/ARGUMENTS

Initially, Applicants would like to express appreciation to the Examiner for the detailed Official Action provided.

Applicants submit that the instant amendment is proper for entry after final rejection. Applicants note that no question of new matter or any new issues are raised by entry of the instant amendment of the claims and that no new search is required.

Moreover, Applicants submit that the instant amendment places the application in condition for allowance, or at least in better form for appeal.

Accordingly, Applicants request that the Examiner enter the instant amendment, consider the merits of the same, and indicate the allowability of the present application and each of the pending claims

Upon entry of the above amendments, claims 1 and 6 will have been amended. Claims 1-6 are currently pending. Applicants respectfully request reconsideration of the outstanding rejection, and allowance of all the claims pending in the present application.

In the Official Action, the Examiner has maintained the previous rejection of claims 1-5, as well as previously added claim 6, under 35 U.S.C. § 103(a) as being unpatentable over OJIMA et al (U.S. Patent No. 5,147,361) in view of SCHARF (U.S. Patent No. 6,682,563).

Without acquiescing to the propriety of the Examiner's rejection, Applicants have amended independent claims 1 and 6 solely in order to expedite prosecution of the present application.

In this regard, Applicants note that OJIMA and SCHARF, alone or in any properly reasoned combination, lack any disclosure of the combination of elements recited in claims 1 and 6. In particular, claims 1 and 6 generally set forth a vertebra body plate including, inter alia, a plurality of spikes extending continuously from and connected directly to the main body portion, at least one of the plurality of spikes being provided on or near at least one of the first and second diagonal lines, wherein generally straight lines connecting adjacent spikes define a rhombic shape, and the plurality of screw insertion holes are provided within the rhombic shape.

Applicants submit that OJIMA and SCHARF, alone or in any properly reasoned combination, lack any disclosure of at least the above-noted combination of elements.

In setting forth the rejection, the Examiner relies on OJIMA as purportedly disclosing the general structure of a vertebra body plate (10). However, the Examiner acknowledges that OJIMA does not disclose the main body portion having a rhombic shape. Nevertheless, the Examiner asserts that it would have been obvious to supply the deficiencies of OJIMA with the purported teachings of SCHARF (i.e., the Examiner asserts that SCHARF discloses a rhombic shaped main body).

However, contrary to the Examiner's assertions, the devices of OJIMA and SCHARF are both structurally very different from the presently claimed vertebra body plate.

More specifically, the lines connecting the sharp apexes 13 (which the Examiner considers to be the presently claimed spikes) in OJIMA define a generally truncated trapezoidal shape. That is, if each sharp apex 13 of OJIMA were to be connected to an

adjacent apex 13 by a generally straight line, a truncated trapezoidal shape would be defined. In this regard, the Examiner's attention is directed to Figures 1D and 1B which show that the positions of the spikes 13 generally correspond to the location of the threaded holes 14 and 15. Further, the plan view shown in Figure 1A clearly illustrates that a first straight line connecting threaded holes 15, a second straight line connecting threaded holes 14, and third and fourth straight lines connecting threaded holes 14 and 15 of each bulbous end portion, define a shape having a generally truncated trapezoidal geometry. Thus, because the spikes 13 are positioned at locations generally corresponding to the locations of the threaded holes, the generally straight lines connecting adjacent spikes 13 consequently define a generally truncated trapezoidal shape.

Further, if adjacent spikes 25 of the device disclosed in SCHARF were connected by straight lines, a generally rectangular shape would be defined. Additionally, the apertures 31 and 35 would be positioned outside of the generally rectangular shape (see, Figures 1 and 3).

Thus, even assuming, arguendo, that the teachings of OJIMA and SCHARF were properly combined, the applied prior art still does not disclose at least the presently claimed plurality of spikes extending continuously from and connected directly to the rhombic shaped body, at least one of the plurality of spikes being provided on or near at least one of the first and second diagonal lines, wherein generally straight lines connecting adjacent spikes define a rhombic shape, and the plurality of screw insertion

holes are provided within the rhombic shape, substantially as recited in independent claims 1 and 6.

In this regard, Applicants note that at least one advantage of the presently claimed vertebra body plate is that the positioning of the spikes (i.e., so as to define a rhombic shape) and the location of the screw insertion holes allow the presently claimed vertebra body plate to provide improved secure fixation to a vertebra body (see, e.g., Page 7, lines 14 and 15, of the present Specification).

Accordingly, Applicants submit that the rejection of claims 1-6 under 35 U.S.C. § 103(a) is improper and should be withdrawn.

Further, Applicants also expressly incorporates all other arguments made in Applicants' previous Responses.

In view of the herein-contained remarks, Applicants submit that independent claim 1 and 6 are in condition for allowance. With regard to dependent claims 2-5, Applicants assert that they are allowable on their own merit, as well as because of their dependency from independent claim 1 which Applicants have shown to be allowable.

Thus, it is respectfully submitted that all of the claims in the present application are clearly patentable over the references cited by the Examiner, either alone or in combination, and an indication to such effect is respectfully requested, in due course.

SUMMARY


Applicants submit that the present application is in condition for allowance, and respectfully request an indication to that effect. Applicants have argued the allowability of the claims and pointed out deficiencies of the applied references. Accordingly, reconsideration of the outstanding Official Action and allowance of the present application and all the claims therein are respectfully requested and is now believed to be appropriate.

Applicants note the status of the present application as being after final rejection and with respect to such status believes that there is a clear basis for the entry of the present amendment consistent with 37 C.F.R. § 1.116. Applicants note that amendments after final are not entered as a matter of right; however, Applicants submit that the present amendment does not raise new issues or the question of new matter. Moreover, the present amendment clearly places the present application in condition for allowance.

Applicants note that this amendment is being made to advance prosecution of the application to allowance and should not be considered as surrendering equivalents of the territory between the claims prior to the present amendment and the amended claims. Further, no acquiescence as to the propriety of the Examiner's rejection is made by the present amendment. All other amendments to the claims which have been made in this amendment, and which have not been specifically noted to overcome a rejection based upon the prior art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attach thereto.

Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully submitted,  
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